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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/941,878	08/29/2001	David Partain	040020-290	7838

27045 7590 02/16/2005

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EXAMINER	
NGUYEN, PHUONGCHAU BA	
ART UNIT	**PAPER NUMBER**
2665	

DATE MAILED: 02/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/941,878	PARTAIN ET AL.
	Examiner	Art Unit
	Phuongchau Ba Nguyen	2665

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 August 2001*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *7-14* is/are allowed.

6)☒ Claim(s) *1-6* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *29 August 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *8-29-02*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fodor (U2001/0027490) in view of Westberg (Load Control of Real Time Traffic, April 2000).

Regarding claim 1,

Fodor discloses RSVP Handling in 3G Networks, in which *a method of access control in a communication network* (3G network) is taught

determining a load status of the network (the SGSN-fig.15 determines if the system is overloaded, when a MS sends a PDP message to the SGSN-fig.15 to achieve the PDP context, wherein the message includes a requested QoS, pg.4, 0070) *between a call originating node* (MS-fig.15) *and a call terminating node* (UTRAN-fig.15)*;*

determining whether the load status permits a specified quality of service (SGSN determines the admission check of the requested QoS profile whether if granted would overload the system or not, pg.4, 0070)*; and*

if the specified quality of service is permitted, establishing a transport connection between the call originating node and the call terminating node (In Fodor, the step of

establishing a transport connection between the MS-fig.15 and the UTRAN-fig.15 if the specified QoS permitted is inherently included when the system is not overloaded, and when the system is overloaded, further steps is in negotiation for the completion of that particular request, see 0071).

Regarding claim 2,

Westberg discloses Load Control of Real Time Traffic. In Westberg, core routers measure the traffic, and if the routers encounter near exhaustion of resources, the routers mark passing probe packets and thereby notify the edge device the lack of resources.

*sending a probe packet through the network from a first node (*initiating edge device*) to at least one other node* (egress edge device) (page 5, Section 4.1-Simple Marking, part 1*);*

updating a portion of the probe packet at each node based on the load status of the node (each router representing a node of the network marks the passing probe packet with their status so that when the probe packet reaches the egress edge device, its header reflects the aggregated resource status including congestion (corresponding to *load status*) along the path that the probe had traveled by, thus the probe packet header reflects status of each router with the marking, page 5, Section 4.1-Simple Marking, part 1 and part 4).

Westberg does not explicitly disclose (1) determining whether the load status permits a specified quality of service; and (2) if the specified quality of service is permitted, establishing a transport connection between the at least two nodes in the network.

Fodor discloses the determination of admission to the requested QoS based on whether the system is overloaded or not, see page 4, 0070 (corresponding to (1)).

Fodor discloses the GGSN performs admission control by granting the establishment a connection between the MS and UTRAN based on the request QoS from MS if the system is not overloaded, see step 9, page 5, 0077.

Westberg and Fodor are analogous art because they are from a similar problem solving areas, load control for DiffServ network, controlled load service in IP networks.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the teaching of load determination with respect to the specified QoS of Fodor with Westberg.

The suggestion/ motivation for doing so would have been to ensure that the traffic through a network conform to a service agreement in order to control levels of delivery service for data packets accordance with the requirements or rules of each service.

Therefore, it would have been obvious to combine Westberg with Fodor to obtain the invention as specified in claim 2.

Regarding claim 3, Westberg suggesting the initiating edge device would, how often and how many times, send a probe packet through the network. This suggestion inherently equates with the claimed limitation "*wherein the step of sending a probe packet through the network is performed continuously,"* see page 6, second paragraph.

Regarding claim 4, Westberg suggests the initiating edge device would, how many times, send a probe packet through the network. This suggestion inherently equates with the claimed limitation "*wherein the step of sending a probe packet through the network is performed at predetermined times,"* see page 6, second paragraph.

Regarding claim 5, in Westberg if congestion occurs, the core router detects the event, and marks the probe packet that has been sent from the initiating edge device, in response to the congestion event, see page 6, first paragraph, (corresponding to *wherein the step of sending a probe packet through the network is performed in response to a network event*).

Regarding claim 6, in Westberg the Differentiated Services (DS) field of the probe packet indicates the DiffServ class (corresponding to *traffic classes*) of the incoming flows from different resources. This fact suggesting that Westberg teaches the claimed

limitation (corresponding to *wherein the step of sending a probe packet is performed for each of a plurality of traffic classes*), see page 8, section 4.4-Codepoints for flow.

Allowable Subject Matter

3. The following is an examiner's statement of reasons for allowance:

Regarding claims 7-13, the prior art fails to teach or suggest an access control system in a network comprising "bandwidth broker server in communication with at least one load measurement proxy and correlating the determined congestion state information," in combination with other limitations, as specified in the independent claim 7.

Regarding claim 14, the prior art fails to teach or suggest an access system in a network comprising "a bandwidth broker server in communication with the at least one load measurement proxy and correlating the determined congestion state information," in combination with other limitations, as specified in the independent claim 14.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuongchau Ba Nguyen whose telephone number is

571-272-3148. The examiner can normally be reached on Monday-Friday from 10:00 a.m. to 2:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on 571-272-3155. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

pbn

Phuongchau Ba Nguyen
Examiner
Art Unit 2665